

**General Teamsters Local Union No. 386, IBT, AFL-CIO and Yosemite Concession Services Corporation, a subsidiary of Delaware North Park Services, Inc. and Service Employees International Union, Local 752, AFL-CIO.**  
Case 32-CD-153

May 29, 1998

DECISION AND DETERMINATION OF  
DISPUTE

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN  
AND BRAME

The charge in this Section 10(k) proceeding was filed on January 12, 1998, by Yosemite Concessions Services Corporation (Yosemite or the Employer), alleging that the Respondent, General Teamsters Local Union No. 386, IBT, AFL-CIO (Teamsters Local 386), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Yosemite to assign certain work to employees it represents rather than to employees represented by Service Employees International Union, Local 752, AFL-CIO (SEIU Local 752). The hearing was held on February 11, 1998, before Hearing Officer Irma Valencia.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Yosemite Concession Services Corporation is a subsidiary of Delaware North Park Services, Inc., which is an operating company of Delaware North Companies, a Delaware corporation with its principal place of business in Buffalo, New York. Yosemite is a contractor engaged in the business of providing recreation and guest services for the National Park Service. During the 12 months preceding the hearing, Yosemite provided services valued in excess of \$50,000.00 to Yosemite National Park. The parties stipulate, and we find, that Yosemite is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Teamsters Local 386 and SEIU Local 752 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

*A. Background and Facts of Dispute*

On approximately October 1, 1993, the National Park Service awarded a contract to the Employer's parent corporation, Delaware North Companies, to operate the concessions at Yosemite National Park. Upon the

award of the contract, Yosemite hired its predecessor's employees and adopted the extant collective bargaining agreements. Among the Unions representing employee groups at the park were Teamsters Local 386, whose contract covered the Park's transportation systems, maintenance duties, and service station duties, and SEIU Local 752, whose contract covered the service workers at the hotels, restaurants, and grocery stores in the Park.

Among the concessions Yosemite assumed at the Park was the operation of the Park's four service stations. At issue in this dispute is the service station operated at Crane Flat. Prior to September 1997, the Crane Flat station contained both a grocery store component, with retail goods, such as snacks, groceries, and souvenirs, available for sale to park visitors, and a service station component, which offered visitors self-service gasoline pumps and routine automotive maintenance, such as oil and tire checks, windshield cleanings, and replacement of hoses, belts, filters, and fluids. Prior to September 1997, Crane Flat was only open during the Park's "high season," and closed during the winter months. During the high season, the retail side of the operation was staffed by approximately two clerk/cashiers and one manager, all represented by SEIU Local 752, who performed traditional retail work such as ordering goods, stocking shelves, assisting customers with their purchases, and transacting sales at the cash register. The automotive side of the operation was staffed by some configuration of two to three employees—a manager, an assistant manager, and service station attendants, all represented by Teamsters Local 386. The service station maintained a small retail operation, which sold automotive supplies, such as motor oil, wiper fluid, fan belts, and the like, to customers.

In the Fall of 1997, the Crane Flat station was closed for a week and renovated so that it could be operated more as a "mini-mart" convenience store. When the station reopened, its automotive function was greatly reduced. The station no longer offered the customer any automotive assistance beyond either assisting a disabled customer with the pumps or calling a tow truck to take a disabled car to the nearest full-service garage in the Park. In addition, new "fast-pay" pumps were installed, which were self-serve pumps that permitted the customer to pay for the gasoline at the pump using a credit card. Only customers paying for gas with cash needed to go inside to see the cashier. The new pumps are reset inside the store by a clerk, thus eliminating the need for a service station worker to reset the pumps manually outside after each sale.

As a result of the reconfiguration at Crane Flat, the Employer eliminated the positions of the employees represented by Teamsters Local 386, and now operates the store entirely with employees represented by SEIU

Local 752. The store is now open on a year-round basis, and has thus far been staffed by one assistant manager and two cashiers, who perform the same retail work that they performed prior to the reconfiguration as well as the residual gas station functions. There are presently no attendants at the self-serve pumps. By letter to Yosemite dated October 15, 1997, Teamsters Local 386 Secretary-Treasurer John P. Souza protested the elimination of the work performed by the Teamsters-represented employees at Crane Flat, and threatened “to take economic action unless the residual manager and attendant work at the station is restored to Teamster employees.”

### B. *The Work in Dispute*

The dispute concerns work formerly performed at the Crane Flat Station by the service station manager, assistant manager, and service station attendants represented by Teamsters Local 386.

### C. *Contentions of the Parties*

Yosemite and SEIU Local 752 contend that after the reconfiguration at Crane Flat, the work in dispute of assisting customers with automotive services has become so minimal that it is economically necessary to combine it with the retail sales duties of the SEIU-represented employees and to assign that work to the SEIU-represented employees because it is predominantly retail work.

Teamsters Local 386 contends that the work should be awarded to employees it represents because a portion of the work remains automotive related, and because the employees it represents are trained and able to perform the nonautomotive retail sales work.

### D. *Applicability of the Statute*

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, two jurisdictional prerequisites must be met. First, the Board must find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. Second, the Board must find that the parties have not agreed on method for the voluntary adjustment of the dispute.

Both jurisdictional prerequisites have been met. First, as noted above, Teamsters Local 386 informed Yosemite that it would take “economic action” unless the disputed work was assigned to the Teamsters-represented employees. Given virtually identical language, the Board has found reasonable cause to believe that Section 8(b)(4)(D) was violated. *Sea-Land Service, Inc.*, 322 NLRB 830, 832 (1997). Thus, we find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. Second, the parties stipulated that they have not agreed on a method to adjust this dispute voluntarily. Accordingly, we find that the Board has jurisdiction to resolve this dispute.

### E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board’s determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

#### 1. *Certifications and collective-bargaining agreements*

Both Unions represented that the Board has certified them as representative of the respective employee groups involved in this case.

While both employee groups have extant collective bargaining agreements with Yosemite—the Teamsters Local 386 contract covers the service station work at Crane Flat and the SEIU Local 752 contract covers the grocery store work at Crane Flat—the parties have stipulated that “there is no agreement in effect between the employer and [either] union allocating the work in dispute.”

We find that these factors do not favor an award of the disputed work to employees represented by either labor organization.

#### 2. *Employer preference*

John Huey, Yosemite’s director of human resources, testified that the Employer has no preference regarding which employee group performs the work in dispute. We find that this factor does not favor an award of the work in dispute to either employee group.

#### 3. *Employer past practice and current assignment*

The Employer’s past practice has been to assign retail sales work to employees represented by SEIU Local 752. Since the reconfiguration at Crane Flat and the virtual elimination of the automotive services performed there, the remaining work at Crane Flat predominantly involves retail sales. As a result, the Employer has currently assigned the reconfigured Crane Flat work to employees represented by SEIU Local 752. Because the Employer’s past practice has been to assign retail sales work to employees represented by SEIU Local 752, and the work is now predominantly retail sales, we find that past practice and current assignment favor an award of the disputed work to employees represented by SEIU Local 752.

#### 4. *Area and industry practice*

The record contains no evidence on the subject of area and industry practice. This factor does not favor

an award of the work in dispute to either employee group.

#### 5. Economy and efficiency of operations

Prior to September 1997, a total of four to six employees was required to operate the Crane Flat station—two to three employees represented by SEIU Local 752 and two to three employees represented by Teamsters Local 386. After the reconfiguration and the elimination of most of the automotive services, the Crane Flat station now requires only two to three employees to operate—one assistant manager and two clerk/cashiers—and that work predominantly involves retail sales and only a very small portion of residual service station work. We conclude that it is more economical and efficient for the Employer to combine the residual gas station work with the predominant retail sales work, and assign that work to the employees represented by SEIU Local 752. Therefore, this factor favors an award of the work to employees represented by SEIU Local 752.

#### 6. Relative skills and training

The record indicates that both employee groups are trained and able to perform the work in dispute. Therefore, we find that this factor does not favor an award to employees represented by either union.

#### Conclusions

After considering all the relevant factors, we conclude that employees represented by SEIU Local 752

are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's past practice and current assignment, and the economy and efficiency of operations. In making this determination, we are awarding the disputed work to employees represented by SEIU Local 752, not to that Union or to its members. This determination is limited to the controversy that gave rise to this proceeding.

#### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Yosemite Concession Services Corporation, represented by Service Employees International Union, Local 752, AFL-CIO, are entitled to perform the work formerly performed at the Crane Flat Station by the service station manager, assistant manager, and service station attendants.

2. General Teamsters Local Union No. 386, IBT, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Yosemite Concession Services Corporation to assign the disputed work to employees represented by it.

3. Within 10 days from this date, General Teamsters Local Union No. 386, IBT, AFL-CIO shall notify the Regional Director for Region 32 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.